MONTANA LEGISLATIVE HISTORY

Chapter 175 1991

Bill H 211 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-24	✓ C	Hearing Date(s)	3-12	✓ C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

1/16	REFERRED TO LOCAL GOVERNMENT		
1/16	FIRST READING		
1/24	HEARING		
1/29	TABLED IN COMMITTEE		

HB 211 INTRODUCED BY BRADLEY, ET AL.
AMENDING THE SEXUAL INTERCOURSE WITHOUT CONSENT STATUTE

1/16	INTRODUCED		
1/16	REFERRED TO JUDICIARY		
1/17	FIRST READING		
1/24	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED		
1/26	2ND READING PASSED	91	0
1/30	3RD READING PASSED	100	0
	TRANSMITTED TO SENATE		
1/31	FIRST READING		
1/31	REFERRED TO JUDICIARY		
3/05	REVISED FISCAL NOTE REQUESTED		
3/06	REVISED FISCAL NOTE RECEIVED		
3/07	REVISED FISCAL NOTE PRINTED		
3/08	REVISED FISCAL NOTE RECEIVED		
3/09	REVISED FISCAL NOTE PRINTED		
3/12	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	49	0
3/14	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/22	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 175	EFFECTIVE DATE: 10/01/91	

HB 212 INTRODUCED BY COHEN, ET AL.
PROVIDE FOR FREEDOM OF EXPRESSION BY STUDENTS

1/16	INTRODUCED		
1/16	REFERRED TO JUDICIARY		
1/17	FIRST READING		
2/01	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/06	TAKEN FROM PRINTING AND REREFERRED TO JUDICIARY		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	51	49
2/20	3RD READING PASSED	53	46
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/08	HEARING		
3/16	COMMITTEE REPORT—BILL NOT PASSED		
3/16	ADVERSE COMMITTEE REPORT ADOPTED	38	11

HB 213 INTRODUCED BY CONNELLY, ET AL.
WEED CONTROL FEE ON MOTOR VEHICLE REGISTRATION TO COUNTY FUND

1/16	INTRODUCED		
1/16	REFERRED TO LOCAL GOVERNMENT		
1/17	FIRST READING		
1/17	FISCAL NOTE REQUESTED		
1/21	FISCAL NOTE RECEIVED		

House BILL NO. 211

INTRODUCED BY Bradley Lee Jazz Messmore Rice

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING THE PENALTY FOR SEXUAL INTERCOURSE WITHOUT CONSENT UNIFORM FOR BOTH HETEROSEXUAL AND HOMOSEXUAL RAPE; AND AMENDING SECTIONS 45-5-501, 45-5-503, AND 45-5-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with ~~a--person--of--the--opposite--sex~~ another commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501(2)(c).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 2. Section 45-5-505, MCA, is amended to read:

"45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

~~(3)--A--person--convicted--of--deviate--sexual---conduct~~

LC 0577/01

INTRODUCED BILL
HB 211

~~without--consent-shall-be-imprisoned-in-the-state-prison-for any-term-not-to-exceed-20-years-or-be-fined-an-amount-not-to exceed-$50,000,-or-both.~~"

Section 3. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. As used in 45-5-503 and 45-5-505, the term "without consent" means:

(1) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

(2) the victim is incapable of consent because he is:

(a) mentally defective or incapacitated;

(b) physically helpless; or

(c) less than 16 years old."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0211, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "Making the penalty for sexual intercourse without consent uniform for both heterosexual and homosexual rape."

ASSUMPTIONS:

1. This bill deletes reference to the sex of a victim of sexual intercourse without consent by substituting "another" for "person of the opposite sex."
2. Under current law, homosexual rape offenders are charged under the deviate sexual conduct statute.

FISCAL IMPACT:

None

Rod Sundsted 3-8-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dorothy Bradley 3/9/91
DOROTHY BRADLEY, PRIMARY SPONSOR DATE

Fiscal Note for HB0211, as introduced HB 211

CHAIRMAN--BILL STRIZICH
SECRETARY-JEANNE DOMME
NORMAL SCHEDULE==> SITE: ROOM 312-2 DAYS: M,T,W,T,F TIME: 8:00 A.M.

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0194	1/15	1/23		PASS AS AMENDED		1/23
TOOLE, HOWARD			EXEMPT INDIGENT FROM POSTING BOND ON APPEAL TO DISTRICT COURT			
HB0197	1/15	1/24		PASS AS AMENDED		1/24
BOHARSKI, WILLIAM			CLARIFY PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF WORKERS' COMP CLAIMS			
HB0198	1/15	1/22		TABLED ON 01/22		
RICE, JIM			REDUCE TIME FOR FILING POSTCONVICTION RELIEF PETITION			
HB0211	1/16	1/24		DO PASS		1/24
BRADLEY, DOROTHY			AMENDING THE SEXUAL INTERCOURSE WITHOUT CONSENT STATUTE			
HB0212	1/16	2/01		PASS AS AMENDED	JUDICIARY	2/06
COHEN, BEN			PROVIDE FOR FREEDOM OF EXPRESSION BY STUDENTS			
HB0212	2/06			PASS AS AMENDED		2/15
COHEN, BEN			PROVIDE FOR FREEDOM OF EXPRESSION BY STUDENTS			
HB0221	1/16	1/24		DO PASS		1/24
TOOLE, HOWARD			REVISION OF AMOUNT OF FINE CREDITED FOR JAIL TIME FOR TRAFFIC VIOLATIONS			
HB0228	1/17	1/25		PASS AS AMENDED		1/29
LARSON, DON			ALLOW EMERGENCY RESPONDERS TO RECOVER COST FOR HAZARDOUS MATERIALS INCIDENT			
HB0229	1/17	1/25		TABLED ON 01/25		
FAGG, RUSSELL			INCREASE PENALTY FOR DISORDERLY CONDUCT OFFENSES			
HB0252	1/21	1/29		PASS AS AMENDED		2/04
FORRESTER, GARY			ALLOW 45 DAYS TO GIVE NOTICE OF RIGHT TO CLAIM CONSTRUCTION LIEN			
HB0268	1/19	1/25		DO PASS		2/05
MEASURE, BRUCE			CREATE APPELLATE DEFENDER COMMISSION & OFFICE OF APPELLATE DEFENDER			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 24, 1991, at 8:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Diana Wyatt (D)

Members Excused: Rep. Brown, Rep. Whalen

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB #211
AMENDING THE SEXUAL INTERCOURSE WITHOUT CONSENT STATUTE

Presentation and Opening Statement by Sponsor:

REP. BRADLEY, HOUSE DISTRICT 79, stated that the concept of this bill was brought to her by the County Attorney's Office in Gallatin County. It is to eliminate, under the rape statute six

words; "a person of the opposite sex." This will equalize the sentences, particularly when involved in a homosexual rape or sexual abuse against boys and girls. Line 22 of page 1, deals with rape of juveniles in which the penalty is a maximum of 40 years. By eliminating the language concerning 20 years penalty, we did two things. One, if one is involved in a homosexual rape of children, boys and girls, that person would fall under the section dealing with penalty up to 40 years instead of, as now, 20 years. The second, 41-5-206 in the Montana Statutes, deals with transfer of cases to criminal court. The language states that if the person charged with 12 years of age or more, the intent of the conduct alleged to be unlawful and the unlawful act constitutes sexual intercourse without consent and therefore, the county attorney can petition the case to the District Court.

Proponents' Testimony:

Jennifer Bordy, Deputy Gallatin County Attorney, stated that because the youth statutes do no permit transfer to District Court unless the offense is sexual intercourse without consent, an offender is tried in youth court and usually walks out without being sentenced to treatment. The other problems with the law as it now stands, does not address non-consensual sexual intercourse when it occurs even between two adult males. It shouldn't be any less a crime if a person forcefully makes another engage in sexual intercourse with them whether or not it be a person of the same sex or the opposite sex. Particularly when it comes to children, it should be no less a crime whether that person molests a child of the same sex or of the opposite sex.

Also, under the definition of deviate sexual conduct, two different crimes exist. One, between consenting adults of the same sex and the other, without consent usually when the victim is less than sixteen years old. It shouldn't be considered the same crime between two consenting adults as between an adult and a child. The way the statute is worded now, "without consent" in acts of deviate sexual conduct, it makes it difficult to tell whether consent is an element of crime that the state would have to prove in criminal prosecution. This is because the only place the words "without consent" appear is in the sentencing portion of the statute.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: none

HEARING ON HB #191
UNIFORM CONFLICT OF LAWS -- LIMITATIONS ACT

Presentation and Opening Statement by Sponsor:

REP. MEASURE, HOUSE DISTRICT 6, stated that HB 191 is an act adopting the uniform conflict of laws, providing for a method of determining the applicable statute of limitations when other state laws are involved in a civil proceeding in Montana. What

Motion/Vote: REP. TOOLE moved to amend HB 173 with the amendment stated by John MacMaster. Motion carried.

Motion/Vote: **REP. TOOLE MOVED HB 173 DO PASS AS AMENDED.** Motion carried.

EXECUTIVE ACTION ON HB #211

Motion/Vote: **REP. GOULD MOVED HB 211 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB #191

Motion/Vote: **REP. MEASURE MOVED HB 191 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB #221

Motion/Vote: **REP. TOOLE MOVED HB 211 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB #197

Motion: **REP. BOHARSKI MOVED HB 197 DO PASS.**

Motion/Vote: **REP. BOHARSKI** moved to amend HB 197. **EXHIBIT 1** Motion carried.

Motion/Vote: **REP. MEASURE** moved to amend HB 197 with the amendment requested by Ms. Van Riper to drop the word "compensation" before benefits anywhere it appears in the bill. Motion carried.

Motion/Vote: **REP. RICE MOVED HB 197 DO PASS AS AMENDED.** Motion carried.

ADJOURNMENT

Adjournment: 11 a.m.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

JU012491.HM1

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL **DATE** Jan 24, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN			✓
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN			✓
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

11.2
1-24-
JDB

HOUSE STANDING COMMITTEE REPORT

January 24, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 211 (first reading copy -- white) do pass .

Signed: _____
Bill Strizich, Chairman

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB 211

DATE 1-24-91 SPONSOR(S) Rep. Bradley

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Thomas Lee	HD 49	✓	
Jennifer Bordy		✓	
Steve Smith	Mt Women Lobby	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.
SECRETARY-JOANN BIRD

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0173	2/04	3/21		CONCUR		3/23
PAVLOVICH, BOB			CLARIFY CERTAIN PROCEDURES OF JUDICIAL STANDARDS COMMISSION			
HB0178	1/25	2/07		CONCUR		2/07
TOOLE, HOWARD			UNIFORM INTERNATIONAL WILLS ACT			
HB0191	1/31	3/18		CONCUR		3/18
MEASURE, BRUCE			UNIFORM CONFLICT OF LAWS -- LIMITATIONS ACT			
HB0194	1/25	2/07		CONCUR		2/07
TOOLE, HOWARD			EXEMPT INDIGENT FROM POSTING BOND ON APPEAL TO DISTRICT COURT			
HB0211	1/31	3/12		CONCUR		3/12
BRADLEY, DOROTHY			AMENDING THE SEXUAL INTERCOURSE WITHOUT CONSENT STATUTE			
HB0212	2/21	3/08	3/11	ADVERSE RPT ADOPT		3/16
COHEN, BEN			PROVIDE FOR FREEDOM OF EXPRESSION BY STUDENTS			
HB0221	1/31	3/06		CONCUR		3/06
TOOLE, HOWARD			REVISION OF AMOUNT OF FINE CREDITED FOR JAIL TIME FOR TRAFFIC VIOLATIONS			
HB0228	2/04	3/15		CONCUR AS AMENDED		3/19
LARSON, DON			ALLOW EMERGENCY RESPONDERS TO RECOVER COST FOR HAZARDOUS MATERIALS INCIDENT			
HB0268	2/11	3/20		CONCUR AS AMENDED		3/20
MEASURE, BRUCE			CREATE APPELLATE DEFENDER COMMISSION & OFFICE OF APPELLATE DEFENDER			
HB0269	2/06	3/12		CONCUR		3/12
COCCHIARELLA, VICKI			INCREASE PENALTY FOR REPEAT INDECENT EXPOSURE--MAKE 3RD OFFENSE A FELONY			
HB0270	2/06	3/12		CONCUR		3/12
COCCHIARELLA, VICKI			INCREASE PENALTY FOR REPEAT VIOLATIONS OF PRIVACY IN COMMUNICATIONS			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 12, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON HOUSE BILL 307

Presentation and Opening Statement by Sponsor:

Representative Joe Quilici, District 71, told the Committee HB 307 extends the filing time requirements for cases involving sexual offenses against minors. He said present law requires that a crime must be reported to law enforcement officers within 72 hours or that good cause be shown. Representative Quilici explained that HB 307 eliminates the 72 hour requirement, and said the funding is actuarily sound and would not affect compensation.

Proponents' Testimony:

John Connor, Montana County Attorneys, told the committee that Mike McGrath, Lewis and Clark County Attorney is in Appropriations and could not be present, but the bill came about through Mr. McGrath's office. He said child abuse victims are unable to get compensation, when they have not reported in time, and that these cases then require administrative review to waive the time requirement. Mr. Connor explained that he does not believe that is

productive, and said these reporting requirements are sometimes unrealistic.

Cheryl Bryant, Crime Victims Unit, Department of Justice, read from prepared testimony in support of HB 307 (Exhibit #1). She said victims can report incidents within 72 hours or show good cause and file claims within one year or show good cause now. Ms. Bryant explained that some claims are denied because the adults to no respond to show good cause. She said about 1300 claims have been filed since January 1978, and a great majority of these are sexually abused minors.

Colette Baumgardner, Legislative Aide, Democratic Women's Caucus for the House and Senate, stated Caucus support of HB 307.

Mike McGrath, Lewis & Clark County Attorney, said he was also representing the County Attorneys Association. He said there have been problems over the years getting counseling compensation for sexual assault victims, and that the bill would resolve this issue.

Opponents' Testimony:

There were no opponents of HB 307.

Questions From Committee Members:

There were no questions form the Committee.

Closing by Sponsor:

Representative Quilici said he believes the bill is an important amendment to the Crime Victims Compensation Act, and asked the Committee to pass HB 307.

HEARING ON HOUSE BILL 211

Presentation and Opening Statement by Sponsor:

Representative Dorothy Bradley, District 79, said the purpose of HB 211 is to amend the rape statutes to include homosexual rape. She said the bill was requested and written by the Gallatin County Attorney's office, and that this is particularly important with regard to victims who are children.

Representative Bradley advised the Committee that eliminating "persons of the opposite sex" takes the penalty up to 40 years. She said that if the offender is a minor the county attorney can petition to transfer the case to the district court.

Representative Bradley explained an incident in Gallatin County where a 17 year old male molested two girls, ages 7 and 8,

and raped a 5-year-old brother. She said the incident was not considered to be rape, but deviate sexual conduct (Exhibit #2).

Proponents' Testimony:

John Connor, Montana County Attorneys Association, said he supported the testimony of Representative Bradley.

Diane Sands, Montana Women's Lobby, said she believes all rapes and sexual assaults should be prosecuted under the same section of the code, and the penalties should be equalized.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked Representative Bradley why the language at the bottom of page 2, top of page 3 was deleted. Representative Bradley replied it was deleted because it would have to go to deviate sexual conduct statutes if a boy was raped. She said it was determined that the language was not needed.

Senator Towe asked Representative Bradley if she was saying that there is no deviant sexual conduct without consent that does not constitute rape. He said, "One is the person who knowingly engages in deviate sexual conduct, and the one deleted is the person convicted of sexual intercourse without consent". Representative Bradley replied that she believes this language is no longer necessary.

Senator Towe asked John Connor if he agreed with Representative Bradley. Mr. Connor replied he did.

Closing by Sponsor:

Representative Bradley made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 211

Motion:

Senator Mazurek made a motion that HB 211 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously.

HEARING ON HOUSE BILLS 269 AND 270

Presentation and Opening Statement by Sponsor:

Representative Vicki Cocchiarella, District 59, advised the Committee she would like hear HBs 269 and 270 at the same time, as they both deal with incidents against children. She reported that a nine-year-old Missoula girl was traumatized for several days following an obscene phone call, and said two children from Billings were traumatized by a man who exposed himself to them. Representative Cocchiarella further reported that a blind woman from Missoula, whose husband is an invalid, repeatedly receives obscene phone calls from a mentally disturbed man and has turned to her (Cocchiarella) for help. She said people who do this are violent or potentially violent, and urged the Committee to think of their own homes and their spouses who may be alone while they were at the Legislature.

Representative Cocchiarella told the Committee that Mike Scalloti testified in the House and presented research reported from a New York study indicating that of 142 exhibitionists studied there were 73,000 victims and 77,700 acts of exposure, mostly to women and children. She said 35 of the offenders committed rape. Representative Cocchiarella advised the Committee that 19 obscene phone callers had approximately 2,000 victims out of 2,600 calls, and 7 of them had committed rape. She further advised them that a study in Missoula of 22 exhibitionists, showed 33,000 acts were committed to more than 30,000 victims. She said a study of obscene phone callers showed 1,500 acts occurring to 1,000 victims, and an average of 300 phone calls.

Representative Cocchiarella told the committee the bills create an increased penalty for these crimes, including more treatment time. She said Dr. Scalloti testified that these programs were successful, and asked the Committee to take care of women and children in Montana.

Proponents' Testimony:

John Connor, Montana County Attorneys Association, explained that both bills were requested by the County Attorneys, as the feeling was that they were dealing with indecent exposure and that these people need to be looked at in an evaluation and treatment area, as well as with regard to penalties. He said confrontation works, and both bills seek to do this.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 3-12-91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 211 (third reading copy -- blue), respectfully report that House Bill No. 211 be concurred in.

Signed: L. Pinsoneault

Richard Pinsoneault, Chairman

BB 3/12/91

Amd. Coord.

Sec. of Senate

Exhibit #2
12 Mar-91
HB 211

The law presently discriminates between the sexes for young victims of sexual crimes and for violent victims of sexual crimes, because Sexual Intercourse Without Consent can only be committed on someone of the opposite sex. This means that if an adult male penetrates a five-year-old girl, he will be sentenced to not less than two or more than forty years in the Montana State Prison. However, if the same adult male penetrates a five-year-old boy, he can be sentenced only to a maximum term of twenty years.

Deviate Sexual Conduct encompasses two totally separate types of crime: Consensual conduct between two adults of the same sex and sexual violence against a juvenile or adult of the same gender. These patently are not the same types of offense and should not be included together under one definition. Even though the sentencing provisions for Deviate Sexual Conduct distinguish between the consensual and non-consensual aspects of this crime, the penalty is not the same for sexually molesting a little girl and for sexually molesting a little boy. Furthermore, "without consent" is not an element of the crime of Deviate Sexual Conduct -- it relates only to the sentencing provisions -- while it is an element of the offense of Sexual Intercourse Without Consent that the prosecution must prove beyond a reasonable doubt. So, eliminating this irrationally discriminating language will also help protect a defendant's right to have every element of the offense proven beyond a reasonable doubt.

One further problem created by the present state of the law involves juveniles offenders. If a teenage offender penetrates a small child of the same sex, his case cannot be transferred to

Ex. 2
3-12-91
HB 211

District Court. If he penetrates a young child of the opposite sex, however, he may be tried as an adult in District Court. This also irrationally discriminates between young victims based on their sex. A case actually arose where a seventeen-year-old male penetrated a five-year-old boy but only sexually assaulted his seven- and eight-year-old sisters. Because he had not committed Sexual Intercourse Without Consent against any of the three victims, he could not be tried in District Court or be sentenced under the sentencing provisions applicable to adults. The offender walked off with only a year of probation and NO sexual offender treatment. The little boy ended up in Rivendell Treatment Center for a year because of the trauma he suffered as a result of the sexual abuse. This type of discrimination should not exist in the law.

The bill presently before this committee will eliminate this irrational discrimination against young girls and young boys that are sexually molested. It leaves intact one law prohibiting sexual conduct between consenting adults of the same gender and creates one law prohibiting non-consensual sexual violence against anyone, a much more rational classification of crimes. It unifies the penalties for both adult and juvenile offenders without regard for the non-consensual victim's gender.

Therefore, I support passage of this bill.

Jennifer Bondy
Deputy County Attorney
Gallatin County